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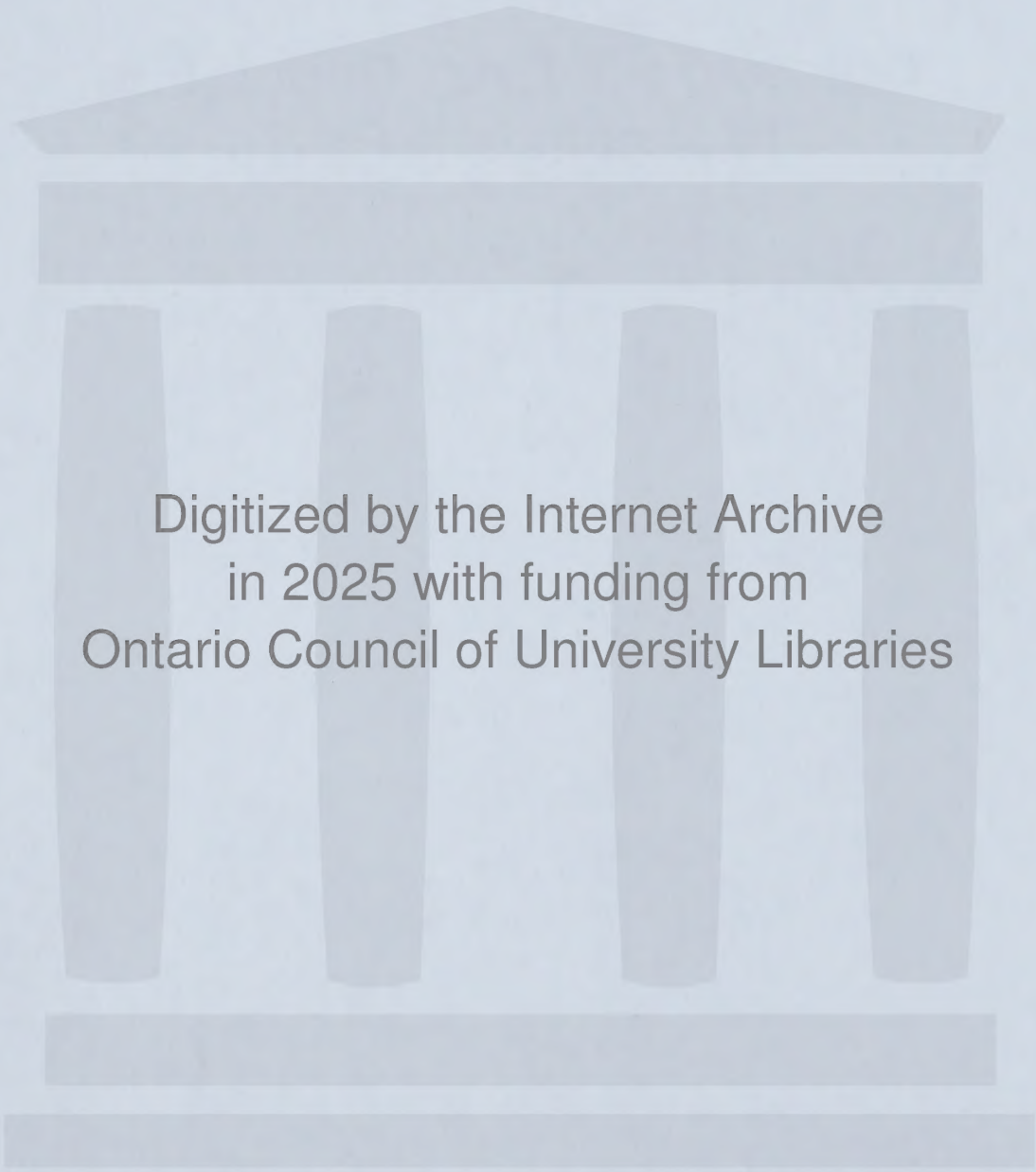
EMPLOYMENT EQUITY

Guide to the Draft Regulation

To accompany Bill 79

June, 1993

Ontario Ministry of Citizenship



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Guide to the Draft Regulation

"The people of Ontario recognize that Aboriginal people, people with disabilities, members of racial minorities and women experience higher rates of unemployment than other people in Ontario. The people of Ontario also recognize that people in these groups experience more discrimination than other people in finding employment, in retaining employment and in being promoted."

The preamble to Bill 79, the proposed Employment Equity Act, poses a challenge: what is the best way to change a situation that we all recognize — the barriers that many people in our society face in, or when trying to enter, the workplace?

Since this government came to power it has been working to answer that question. Ontario's Employment Equity Commissioner, Juanita Westmoreland-Traoré, began the process of ongoing consultation and is putting into place crucial information and education systems on employment equity. The Minister of Citizenship, Elaine Ziemba, has also held discussions across the province with members of the different groups that face discrimination, employers, unions and experts in the field of employment equity. All were asked to help design an effective and workable way to help break down the

barriers and to take full advantage of Ontario's most important resource — its people.

The result of those discussions is Bill 79, introduced a year ago, and the Draft Regulation to Bill 79, which sets out what is essentially a three-step process to get employers and employees working together to move toward employment equity. First, look at the composition of the workforce. Second, examine the rules and day-to-day practices that affect workers and potential employees and decide which rules and practices are unfair to some groups. And third, set goals and plan ways to break down the barriers and give all workers equal opportunity in the workplace so that, ultimately, your workplace will reflect the composition of your community.

The discussions are not over. There are more refinements to be made.

In the next few months, a committee of the Ontario Legislature will look carefully at the provisions of Bill 79 itself.

At the same time, work will continue toward a final version of the Draft Regulation to Bill 79.

- We will continue our ongoing discussions with representatives of the designated groups — Aboriginal people, people with disabilities, members

of racial minorities and women. We will continue to meet with employers, labour, and employment equity practitioners.

- So far, 51 private and public sector employers have been asked to tell us how well they think the Draft Regulation would work in their organization and we have "tested" the Draft Regulation in five workplaces. They have been invited to suggest changes as a result. That process will continue through the summer.
- And we want to hear from *anyone* in Ontario who has a suggestion or a comment on the Draft Regulation.

This *Guide* provides the highlights of the Employment Equity Draft Regulation. (A copy of the legal text is available by calling one of the telephone numbers listed below.)

We would like you to examine the Draft Regulation. In particular, we would like to hear your comments or suggestions on areas such as:

- the workforce survey
- review of employment policies and practices
- qualitative measures
- numerical goals
- employee participation
- information and communication

If you would like to respond to these issues or comment on anything in the Draft Regulation, please write to:

The Employment Equity Regulations Unit
Ontario Ministry of Citizenship
101 Bloor Street West
6th Floor
Toronto, Ontario
M7A 2R9

Please send your response **before October 29th, 1993.**

If you would like a copy of the legal text of the Draft Regulation or general information on Employment Equity, please call the Ministry of Citizenship's Information Line.

- Outside of Toronto, call: 1-800-268-5737
- In Toronto, call: 326-6224
- TDD, outside of Toronto, call: 1-800-387-4456
- TDD, in Toronto, call: 326-1778

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1. Introduction

PART ONE of the Draft Regulation describes some of the terms used in the document and defines the *designated groups* — the four groups that are the specific targets of Ontario's employment equity program.

Those groups are:

- Aboriginal people - this includes members of the Indian, Inuit and Métis peoples. This definition is drawn from the Ontario Police Services Act. It will form the basis of further consultation with representatives of Aboriginal peoples in Ontario.
- persons with a disability - this group includes persons with a persistent impairment (physical, mental, psychiatric, sensory or learning) whose opportunity for employment is likely to be affected by the impairment
- members of racial minorities - people who because of their race or colour are in a visible minority in Ontario
- women.

A person may be a member of more than one designated group. For example, aboriginal, disabled or racial minority women may face additional difficulties

because they are members of more than one designated group.

A number of special terms are used in the draft regulation. Here are some of them:

The *Commission* is the Employment Equity Commission. It will have several roles — as facilitator, educator and manager of Ontario's employment equity program. For instance, the Commission may provide assistance and information on:

- what employers will have to do
- where employers may get technical help
- how workers can take part
- information and training materials
- the role of members of designated groups in the employment equity process
- guidelines on different parts of employment equity, such as *workforce surveys* and *employment equity plans*
- the provision of data for setting numerical goals

A *geographical area* is used by an employer in the planning process to set goals for the composition of the employer's workforce.

The intention of employment equity is, over time, to have each workforce look more like its surrounding community. A *geographical area* is the term used to

describe the boundaries of a particular community for planning purposes. Ontario will use the definitions set out by Statistics Canada.

Community, for the purposes of making an employment equity plan, means the *working age population* of a specific *geographical area.* In other words, when employers are looking at different factors as they try to set numerical goals they only consider people of working age.

An *occupational group* means one of 14 job categories, as identified by Statistics Canada, used in the Draft Regulation. (A list of these categories appears at the end of this guide.)

Occupational groups are also used in the planning process. It is important that workforces become more representative of the community in each occupational group. That way, for example, qualified members of designated groups have an equal opportunity to become senior managers and are not limited to lower occupational groups.

A *small employer* in the private sector is defined as a company with more than fifty but fewer than a hundred employees. *Small employers* have fewer requirements to meet in developing employment equity plans.

In the Broader Public Sector — for example, municipalities, schools, universities and the health

care system — a *small employer* refers to an organization with more than 10 employees but fewer than fifty.

A key part of employment equity is the partnership between workers and their employer that is needed to make workplaces fair for all.

Joint responsibility is unique to Ontario's employment equity program. It calls on employers and employees represented by bargaining agents in unionized workforces to work together to decide the best way to put employment equity into action at a particular organization. Designated groups that are part of that workforce will be consulted. Where designated group members are not in the workforce, the Employment Equity Commission may provide advice and assistance.

For the activities where there is a joint responsibility, references in the Draft Regulation (and this guide) to *the employer* mean both the employer and the bargaining agent working as a team.

Part One concludes by noting that regulations must still be developed for the special situations in the construction industry and Aboriginal workplaces.

2. The Workforce Survey

PART TWO of the Draft Regulation explains the first stage of putting employment equity into place — the *workforce survey.*

The purpose of the survey is to take a "snapshot" of what each company's workforce looks like — specifically, how many members of designated groups are in the workforce at a particular time. That snapshot shows the starting point so that employers can see the extent of *under-representation* in their workforce and later see how well their employment equity plan has achieved better representation of designated groups.

Before employees are invited to take part in the survey, employers will provide them with information about employment equity, so that employees understand why the survey is being conducted and how it fits into the larger employment equity process. Relevant information may be provided with the assistance of the Employment Equity Commission.

The key to this survey is *self-identification.* Workers will decide if they wish to identify themselves as a member of a designated group. They will not be required to identify themselves if they don't want to.

Each employee will be given the chance to answer several simple questions. Those questions ask people to identify themselves if they are:

- Aboriginal
- a person with a disability
- a member of a racial minority
- a woman.

Employees are not required to answer the questions, but they must return their copy of the survey to their employer.

Employers are required to keep all information confidential, though they must be able to identify each person who returns a survey.

Workers who join a company after the survey has been done will be given a chance to answer the questions. As well, employees who did not wish to identify themselves as part of a designated group when the survey was first taken, or whose status has changed, may later ask to fill out the questionnaire. The employer must keep the survey information up to date and remove data if members of designated groups leave their jobs.

Employers will provide assistance to employees who need help in filling out the survey.

When the survey has been completed, employers will determine how many members of each designated group work:

- in each occupational group
- in each geographical area where the employer has a workforce.

These statistics must be compiled separately for men and women. Small employers will not have to break down those numbers into the geographic area and occupational group categories. They will only have to list the number of designated group members in their workforce.

Every employer will be required to do a new survey after nine years.

Some employers (for example, many contractors to the federal government) have done surveys in the past that were designed to gain the same kinds of information as this workforce survey. Those employers will not have to do another survey immediately if:

- the information has been kept up to date
- the questions and process used in the previous survey resulted in the same information as would be the case if a new survey were done
- the previous survey was based on self-identification.

If, in an organized workplace, the bargaining agent and the employer can't agree if these standards were met, they can redo the survey jointly or they can seek a ruling from the Employment Equity Commission.

3. Finding the Barriers to Employment

One of the important things that employment equity does is find barriers to employment and work to eliminate them.

Barriers can be *intentional* but in most cases they are indirect or *systemic.*

Systemic barriers are unfair rules and ways of operating in the workplace that prevent members of designated groups (and often other workers) from getting equal treatment and equal recognition of their skills and qualifications.

Because these unfair practices and policies are built into the system over time they often aren't seen as barriers at all. Many employers and employees think of these barriers as "just the way we do business". For instance, some people don't realize that advertising a job opening only by word of mouth doesn't give everyone an equal chance to apply for that job.

Many people don't even realize these barriers exist. By finding them and eliminating them, all workers benefit.

The first step is for a company to identify the *policies and practices* of hiring, retention (keeping employees in the workforce) and promotion. This process of identification is referred to as the *employment systems review (ESR).*

All employers (small and large) will have to look at their policies and practices for hiring, promotion and retention of employees.

Large employers — private sector companies with more than 100 workers and Broader Public Sector companies with more than 50 workers — must look in greater detail at the following six *policies and practices:*

- the way they choose people for job openings
- the way they promote people, or move them between different jobs in the same company
- how workers are trained, who gets training and promotion and how they are judged on how well they do their job
- how decisions are made to fire or lay-off an employee and the policies about how they are treated if they decide to retire or resign
- the system of deciding who gets what wages and benefits
- how different working conditions or supports (for example, different physical access to the workplace,

flexible working hours, differently designed equipment) to meet special needs are provided (or not provided) to members of designated groups. (Providing different working conditions is often referred to as *accommodation*.)

Employers that have separate branches, divisions, work groups or worksites may look at those branches together or as separate units, as long as the firm's entire workforce is considered.

When employers and bargaining agents have taken a close look at their policies and practices, they will decide which ones act as *barriers.* The policy or practice will be considered a barrier if it has a direct or indirect negative impact on members of designated groups. Since employers often don't know how to recognize these barriers, the Employment Equity Commission will be available to provide information to help identify barriers.

Some employers have already reviewed their policies and practices as part of an employment equity plan. They will not have to conduct another such review if the results of the previous review are up to date and the process covered the same issues as the review called for in the Draft Regulation. The **Employment Equity Commission** will determine if a new review is needed in those cases where the employer and the bargaining agent cannot agree if the standards have been met.

4. The Employment Equity Plan

After the barriers to employment have been identified, employers and workers must decide how to get rid of the barriers and how to make the workplace more representative of the community.

That will be done by developing an *employment equity plan.*

Each company's *employment equity plan* will include:

- *qualitative measures:* these are actions that are not tied to numbers. For example, providing different tools or working conditions for employees with special needs would be a qualitative measure.
- *numerical goals:* these are the proportion of opportunities for change (new positions created, transfers, promotions, etc.) the employer plans to fill with members of each designated group. For example, an employer might set a goal of one-third of job opportunities in a particular occupational group to be filled by women.

(*Numerical goals* and *qualitative measures* will be explained in more detail in the next section.)

To help gauge their progress, each employer will state in the plan:

- what the barriers are
- what measures will be put in place to eliminate those barriers and when
- what the numerical goals are.

The employer must also describe a timetable for each of the qualitative and numerical goals, and a process to monitor the progress of the plan.

The plan itself will last for three years. At the end of that time, the employer will review the plan to see how effective it has been in reaching goals and eliminating barriers. The plan will then be revised and put into action for the next three years.

In the case of an employer with a number of branches or worksites, each branch can have a separate chapter or component in the employment equity plan as long as the entire workforce is covered under one over-all plan.

Developing qualitative measures

A *qualitative measure* is a way of supporting or assisting workers. In basic terms an employment equity plan will list what qualitative measures an employer will take to:

- eliminate the barriers that have already been found
- work toward making each occupational group in their workforce more representative of the working age population in their geographical area
- make sure that the workplace respects the principles of employment equity.

Those measures can include:

- ways to help members of designated groups to be hired and earn promotions
- ways to help workers by providing appropriate equipment or working conditions (such as flexible hours)
- measures that help all employees, such as eliminating harassment and discrimination in the workplace.

Employers will develop different qualitative measures to meet specific needs.

An employment equity plan will set out what qualitative measures have been put in place. It will identify other measures that have been developed but aren't in operation yet, along with a timetable for when those

measures will begin. And, the plan will set goals and timetables for implementing new measures.

In particular, measures designed to meet the needs of persons with disabilities will be developed in accordance with the Ontario Human Rights Code and its guidelines. Some of those measures for persons with disabilities might include:

- communications and human support services (for example, access to a sign language interpreter)
- technical aids and devices
- changing the design of the job itself by using things like more flexible hours of work or job sharing
- changing *workstations* (for example, having special chairs or lower filing cabinets) and improving access to the workplace by providing, for example, wheelchair ramps or elevators.

The part of the employment equity plan that includes measures for people with disabilities must contain:

- the procedure for workers or job applicants to ask for and have their special needs met
- the way the employer will respond to those requests.

Setting numerical goals

As well as guiding the development of qualitative measures, the Draft Regulation contains a method for setting *numerical goals.*

A *numerical goal* is the proportion of the *job opportunities* (new hirings, promotions, or transfers to fill new or vacant positions) that will be filled by designated group members as a result of the employment equity plan.

Each employer (except for small employers) will set numerical goals which:

- will show reasonable progress towards reflecting the representation of designated groups in the community
- can be accomplished by working in good faith to carry out the qualitative measures in each plan.

Numerical goals are developed using a number of different *factors.* The intention is to set goals that will make a difference when they are reached and that actually *can* be reached.

The Employment Equity Commission will make available the information (data) each employer needs to develop these goals.

In setting realistic numerical goals, employers will consider these factors:

- **Under-representation** - the difference between the proportion of designated groups in the community and the proportion of the designated groups in the employer's workforce in that community
- **Internal Availability** - the number of members of a designated group already working for an employer who could qualify for or be trained to take a different job in the company
- **External Availability** - the number of qualified members of a designated group in the geographic area.

External availability is a key part of the process. Every geographic area will have different numbers of each designated group. To figure out a realistic figure for external availability, each employer will look at the proportion of members of each designated group who:

- are in the *working age population* of the geographic area
- are in the occupational group in the geographic area
- have the required skills for the particular job within the occupational group
- are in training and education programs in Ontario that will help them get the right skills.

Some of the factors will be more relevant than others in determining external availability. For instance, the working age population statistic may be the most relevant for unskilled, entry-level jobs. For a position for which a high level of skills is required (for example, a physiotherapist or other skilled professional) the data on people with particular skills in particular occupational groups and those in educational programs would be more relevant.

An employer may also use data from a larger geographic area if the recruitment practice is to look in the larger area for qualified candidates. For example, some organizations may regularly look across the province for candidates in very specialized occupations.

By considering all of these factors, the employer will be able to set a goal for each designated group in each occupational group. The plan will show how each goal was determined.

The employment equity plan will set goals for each occupational group in the workforce. Employers that have branches in different geographic areas of Ontario will set goals for each occupational group in each geographic area.

Employment equity cannot change things overnight. There would be little point, for instance, in an employer setting a goal of women filling half of the company's

chemical engineer positions when the proportion of women working in that field, or with the necessary skills, or currently in engineering schools, is much lower.

Employment equity is a process of evolution and of progress. By setting new goals in each employment equity plan, an employer can work towards reflecting the working age population of the community as that community itself is changing. And in every case, the goals will be realistic.

Review and Revision

Every three years, the employer will go back over the plan and the information used to prepare the plan and see how the goals and measures should be revised or updated because of changing circumstances.

The employer must use up-to-date information when reviewing the plan. The process of reconsidering and revising the goals and measures will be described by the employer in the plan.

The new plan will include details of how the review took place and what changes were made in the qualitative measures and the numerical goals.

Employers must identify in their review when goals were set but not met, or when reasonable progress was not achieved.

In both cases, qualitative measures must be developed and implemented by the employer for the next planning cycle.

5. Employee Participation

To be successful, employment equity needs partnership — all parties in the workplace co-operating to work and plan together. Many workplaces have a long history of creating joint committees to examine issues such as occupational health and safety. This experience will help the employment equity process to succeed.

In cases where employees are represented by one bargaining agent, the bargaining agent and the employer will set up a process to carry out their joint employment equity responsibilities. Those responsibilities will include:

- the workforce survey
- reviewing workplace practices and policies
- identifying barriers
- developing the employment equity plan, including setting numerical goals and qualitative measures
- reviewing and revising the plan.

If there is more than one bargaining agent, a co-ordinating committee of the different bargaining agents and the employer will be set up. The co-ordinating committee can decide whether it will consider employment equity issues on an employer-wide basis or by other components (such as geographical area). The co-ordinating committee will also decide which of the joint responsibilities will be carried out:

- by the committee
- by the employer and individual bargaining agents
- by some other means that they agree upon.

In each case, the bargaining agent will consult with the workers it represents, including those who are members of designated groups. If the bargaining unit doesn't include any members of a particular designated group, the employer and bargaining agent must contact the Employment Equity Commission, which will provide information and advice.

Employers and bargaining agents in a unionized workplace will determine how joint responsibilities will be carried out and how bargaining unit representatives participating in the agreed upon process will be compensated for the time they spend on employment equity related duties.

In many cases in Ontario there is no bargaining agent for employees. In those cases, employers will establish an

effective process by which their employees, including members of designated groups, can be consulted on employment equity issues, including the workforce survey, identifying barriers, planning and setting goals. Employment equity plans for companies that do not have a bargaining agent for their workers will include a description of how employees were given the opportunity to take part in the planning process.

In workplaces without bargaining agents, employees will be paid for time spent on employment equity activities.

The Employment Equity Commission will be available to provide support and advice to all parties involved.

Information for employees

An important part of employment equity is *information* and explanation — giving workers a chance to find out about the process, how they will be affected and how they can take part, if they wish.

Every employer will create a system or mechanism to give employees information and explain to them about the different stages in the employment equity process. That can happen all at once, or at different stages, as long as employees find out about the different activities before they are carried out.

Every employer will explain and inform its employees about:

- the consultation process
- the survey
- the review of the employer's hiring, promotion and termination practices
- the development and implementation of the employment equity plan.

Employers will make sure their employees have access to:

- a summary of the plan, including a list of the qualitative measures, numerical goals and timetables
- a summary of the Employment Equity Act and the regulation
- employment equity *reports* prepared by the employer (more about these reports below)
- copies of any documents the Employment Equity Commission has asked the employer to make available to employees
- orders of the Commission or the Employment Equity *Tribunal* which apply to the employer.

Employers must make sure that all of this information is accessible to the employees to whom it applies.

Because of the joint responsibilities that must be carried out by bargaining agents, the legislation requires that they have access to all information needed to participate in the process.

6. Retaining and Reporting Information

All work towards employment equity will be monitored to ensure that progress is made. PART SIX of the Draft Regulation considers how information is kept and reported.

All employers must keep copies of their employment equity plans and the information that was used to make the plans for three years after the end of the plan (six years in all).

Larger employers will keep records on employment history, which occupational group the employee is in, the salary level and whether the employee is a member of a designated group. Only people responsible for carrying out the employer's obligations under the Employment Equity Act will be allowed to see these records.

Having compiled all the necessary information to develop an employment equity plan, employers, other than small employers, will prepare a report within six months of developing the plan. That report will reflect the current status of the workforce at the beginning of the plan including:

- the total number of workers in each occupational group and the number of designated group members in each occupational group
- the number of full-time, part-time, term and seasonal workers in every occupational group and the number of designated group members in these categories
- the total number of workers who completed a workforce survey.

Small employers must report the total number of employees in their workforces and the total number of designated group members in their workforce.

Employers with more than 500 workers will also have to provide information about the number of designated group members in 4 salary range groups for each occupational group.

End of Plan Report

At the end of each three-year plan, the employer will put together another report showing what progress has been made in each category. As well as the kind of information required for the first report, it will also include:

- the numerical goals set out in the employment equity plan
- the number of job opportunities in each occupational group that were filled during the three years of the plan and the number filled by designated group members
- the total number of employees in each occupational group and the number of designated group members in each occupational group at the beginning and the end of the plan
- a list of the qualitative measures put in place
- any other information the employer thinks is important.

The final report for each three-year plan must be prepared within six months after that plan has finished.

A the end of each three-year plan, a *small employer* will prepare a final report that states:

- the total number of employees in the workforce and the number of members of each of the designated

groups in the workforce at the beginning and at the end of the plan
- a list of the measures put in place to get rid of barriers
- a list of other qualitative measures that have been put into action.

The Certificate

About 17,000 Ontario employers will be covered by the employment equity legislation. To streamline the monitoring process, employers will submit copies of their employment equity reports only if they are requested by the Employment Equity Commission.

Instead of a complete report, each employer will send to the Employment Equity Commission a certificate stating that they have done everything required by the Employment Equity Act and the Regulation and will be signed by the chief executive officer of the organization, or the equivalent.

The first certificate will be sent to the Commission within six months of the beginning of the plan. The certificate will state that the employer has:

- informed the workforce about the stages of the employment equity program
- consulted with employees, including designated group members

- done a workforce survey
- reviewed employment policies and practices
- prepared an employment equity plan and report.

The certificate for large employers will also give:

- the number of employees in the workforce
- the number of employees in each occupational group
- the number of designated group members in each occupational group.

The certificate for small employers will include the total number of employees in the workforce and the total number of designated group members in the workforce.

Each certificate will include a statement of where the Employment Equity Commission may get a copy of the employer's report and plan.

After each three-year plan, a new certificate will be required. It will include:

- the number of employees and the number of designated group members in that workforce at the beginning and at the end of the previous plan.
- a statement that the employer has prepared a revised plan and report

Large employers must also state the number of employees in each occupational group in the employers workforce and the number of designated group members among those employees.

Federal/provincial co-operation

A number of employers in Ontario fall under the requirements of the federal government for its contractors and already have employment equity programs in place to meet those requirements.

Officials from both levels of government are working towards ensuring that employers can direct their efforts to achieving employment equity rather than reporting to both levels of government. For example, the Government of Ontario intends to avoid duplication in record keeping, reporting or auditing requirements.

7. The Occupational Groups

The job categories list in the Draft Regulation is called the National Occupational Classification. These are the categories used by Statistics Canada and Employment and Immigration Canada. Ontario has chosen to use these same categories so the same data is used provincially and federally.

1. Senior Managers
2. Middle and Other Managers
3. Professionals

4. Semi-professionals and Technicians
5. Supervisors
6. Foremen/women
7. Administrative and Senior Clerical
8. Sales and Service - Skill level III
9. Skilled Crafts and Trades
10. Clerical
11. Sales and Service - Skill Level II
12. Semi-Skilled Manual Workers
13. Sales and Service - Skill Level I
14. Other Manual Workers

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